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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, DENIS
MOLINA, JHONY SILVA, MARIA ELENA
HERNANDEZ, O.C., SANDHYA LAMA,
S.K., TEOFILO MARTINEZ,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-05687-TLT

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO POSTPONE EFFECTIVE
DATE OF AGENCY ACTION;**

Date: July 29, 2025

Time: 2:00 PM

Place: Courtroom 9, 19th Floor,
San Francisco, U.S. Courthouse

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INTRODUCTION

Defendants would have this Court close its doors to tens of thousands of people who have lived here lawfully for years (and in most cases, decades)—allowing them to be stripped of immigration status, torn from their families, and banished from the country they have called home without even considering their claims. But every district court to consider Defendants’ jurisdictional arguments regarding the limits on review of TPS terminations has rejected them. Nor does the Supreme Court’s unreasoned emergency stay in a different case dictate the Court’s decision here.

Defendants focus intently on denying this Court’s authority to consider Plaintiffs’ claims or grant them relief and barely engage with the merits—perhaps because their actions are indefensible. Defendants have no response to the wealth of evidence supporting Plaintiffs’ first APA claim, which shows that Defendants pay lip service to country conditions assessment, but in fact have adopted a general policy of terminating TPS *irrespective of country conditions*, in direct violation of the TPS statute. Nor do they have any coherent answer to Plaintiffs’ second APA claim, which rests on the uncontested fact that the agency has *never before*—in the 35-year history of the TPS program—terminated a designation of longer than three years without providing *any* orderly transition period. Finally, as to Plaintiffs’ race discrimination claim under the Constitution, substantial evidence establishes that the decision to strip immigration status at issue here was motivated by racial animus—including the racist belief that non-white immigrants are “invading” the United States and therefore must be expelled at all costs. Accordingly, this Court should grant Plaintiffs’ Motion and postpone the effective date of the terminations of TPS for Honduras, Nepal, and Nicaragua pending a final decision on the merits.

ARGUMENT

I. THIS COURT HAS JURISDICTION AND AUTHORITY TO GRANT RELIEF.

A. 8 U.S.C. Section 1254a(b)(5)(A) Does Not Bar Plaintiffs’ Claims

Defendants rely on Section 1254a(b)(5)(A) to dispute jurisdiction, but lack the “clear and convincing evidence” required to show Congress barred Plaintiffs’ claims. *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1102 (N.D. Cal. 2018) (citing *Abbott Labs v. Gardner*, 387 U.S. 136, 141 (1967)). The

1 statute bars review only of “any determination . . . with respect to the designation, or termination or
2 extension” of TPS. *Id.* It does not bar review of constitutional claims, APA claims that challenge the
3 collateral processes by which such determinations are made, or claims challenging aspects of TPS
4 decision making that are not part of the “designation, or termination, or extension” decision.

5 First, the Supreme Court has adopted a stringent clear statement rule for provisions attempting
6 to strip jurisdiction over constitutional claims. *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S.
7 667, 680-81 (1986) (rejecting “extreme” position foreclosing constitutional claims). At minimum, a
8 statute must mention constitutional claims. This one does not.

9 Second, the statute does not bar Plaintiffs’ APA claims. Those claims challenge defects in the
10 agency’s decisionmaking process that are collateral to any “determination” under the statute. *See*
11 *Ramos*, 321 F. Supp. 3d at 1101-05 (rejecting Defendants’ argument that Section 1254a(b)(5)(A) bars
12 challenges to “generally applicable process, practice, or legal interpretation employed by the Secretary
13 in making [TPS] determinations”).

14 Defendants’ broader reading cannot be reconciled with *McNary v. Haitian Refugee Center*,
15 498 U.S. 479 (1991), or the other Supreme Court and Ninth Circuit cases that interpret statutes limiting
16 judicial review of “determinations” in the immigration context. Mot.14 (Dkt. 17). Those cases preserve
17 review of claims that challenge collateral decisionmaking processes, like Plaintiffs’ claims here. This
18 Court is bound by those controlling decisions, as other district courts have uniformly concluded in
19 TPS challenges. *Id.* at 13; *see also Nat’l TPS All. v. Noem*, 773 F. Supp. 3d. 807, 829-31 (“NTPSA
20 I”).

21 Defendants ignore this controlling immigration authority and instead rely on cases interpreting
22 statutes about Medicare. Opp. 10 (Dkt. 45) (citing *Amgen v. Smith*, 357 F.3d 103 (D.C. Cir. 2004) and
23 *DCH Reg’l Med. Ctr. v. Azar*, 925 F.3d 503 (D.C. Cir. 2019)). Those cases do not interpret the word
24 “determination” in the context of a statute regulating jurisdiction over immigration. Moreover, the
25 jurisdiction stripping provision at issue in *Amgen* explicitly precluded review over not only payment
26 “adjustments” but also “[t]he development of the [payment] classification system” itself; it is thus
27 unsurprising that the court held it lacked authority to review the manner in which the agency made a
28

1 payment adjustment decision. 357 F.3d at 111 (D.C. Cir. 2004). *DCH Regional Medical Center* is
2 similarly inapposite. The court there recognized that it might have had authority to review the manner
3 by which the agency calculated payments if the regulatory scheme had provided a general rule for
4 calculating payments that was applied to individual hospitals. *Id.* at 506. The TPS statute *does* provide
5 a general rule for making country conditions determinations that is applied to individual country
6 decisions, so *DCH* provides little guidance. Defendants also cite *Skagit County Public Hospital*
7 *District No. 2 v. Shalala*, but that case held that a challenge to the process the agency used to arrive at
8 its decision *was* generally reviewable, but had been mooted by a change in the process. 80 F.3d 379,
9 386 (9th Cir. 1996).

10 Defendants also rely on the vacated *Ramos* panel decision, Opp. 10-11, but that decision was
11 vacated upon a grant of rehearing en banc. *Ramos v. Wolf*, 59 F.4th 1010 (9th Cir. 2023) (vacating the
12 decision Defendants cite). In other words, a majority of the Ninth Circuit rejected it. Even if the *Ramos*
13 panel decision were good law, it is distinguishable: Plaintiffs do not challenge “substantive
14 considerations underlying the Secretary’s specific TPS determinations,” but instead her failure to
15 follow the procedures required by statute—in particular her failure to conduct any genuine review of
16 country conditions. *Ramos v. Wolf*, 975 F.3d 872, 893, 890-91 (9th Cir. 2020). Another district court
17 recently reached the same conclusion. *See CASA, Inc. v. Noem*, No. 25-1484-TDC, 2025 WL 1907378,
18 at *10 (D. Md. July 10, 2025) (“claims . . . challenging a general policy or practice to terminate TPS
19 designations on a preordained basis in order to reduce the number of non-white immigrants in the
20 United States . . . are not barred by § 1254a(b)(5)(A)”).

21 Defendants also attempt to evade the controlling authority regarding immigration statutes
22 restricting review of “determinations” by pointing to other words in this statute. Defendants suggest
23 the appearance of “any” before “determination” and the phrase “with respect to” grant them a get-out-
24 of-court-free card. Not so. “Any” cannot expand the meaning of “determination.” “[T]he statute’s
25 reference to ‘any determination’ does not subsume ‘any’ general policies or practices. Rather, the word
26 ‘any’ must be understood in its grammatical context.” *Ramos*, 321 F. Supp. 3d at 1104 (collecting
27 cases). Also courts have consistently read other open-ended terms in jurisdiction-stripping statutes
28

1 narrowly. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018) (construing reference to
 2 claims “arising from” detention narrowly, because “when confronted with capacious phrases like
 3 ‘arising from,’ we have eschewed ‘uncritical literalism’”) (plurality) (citation omitted); *see also id.*
 4 (collecting cases involving “affected,” “related to,” and “in connection with”); *Demore v. Kim*, 538
 5 U.S. 510, 516 (2003) (provision stating “No court may set aside any action or decision . . . regarding
 6 the detention . . . of any alien” not broad enough to cover claim that agency lacked statutory and
 7 constitutional authority to detain) (citation omitted).

8 Defendants cite the Supreme Court’s reliance on the “broadening effect” of the words “any”
 9 and “regarding” in *Patel v. Garland*, 596 U.S. 328, 338–39 (2022), but the statute there did not contain
 10 the word “determination,” and the Court relied on other context clues not present here. *Id.* (citing
 11 amendment history of 8 U.S.C. § 1252(a)(2)(D)). When Congress wants to write “categorical review
 12 preclusion language” into law, Opp. 13, it knows how to do so, *see, e.g., Gebhardt v. Nielsen*, 879
 13 F.3d 980, 984–85 (9th Cir. 2018) (statute specifying decisions were in Secretary’s “sole and
 14 unreviewable discretion” barred review of all but constitutional claims). The TPS statute does not
 15 contain any such broad language.

16 Finally, Plaintiffs’ other APA claim concerns the Secretary’s decision under *subsection (d)* of
 17 the TPS statute to provide no “orderly transition” period for TPS holders affected by her termination
 18 decisions. 8 U.S.C. § 1254a(d)(3). The TPS statute’s jurisdiction stripping provision concerns only
 19 determinations under *subsection (b)*, and so cannot reach Plaintiffs’ challenge to a decision under
 20 subsection (d). *See id.* § 1254a(b)(5)(A) (limiting judicial review of determinations “*under this*
 21 *subsection,*” i.e. subsection (b)).

22 **B. This Court Has Authority to Postpone Agency Action Under 5 U.S.C. § 705.**

23 Defendants are wrong that postponement of the challenged agency action under §705 of the
 24 APA constitutes an injunction barred under 8 U.S.C. § 1252(f)(1). That statute “generally prohibits
 25 lower courts from entering *injunctions* that order federal officials to take or to refrain from taking
 26 actions to enforce, implement, or otherwise carry out” certain immigration statutes. *Garland v. Aleman*
 27 *Gonzalez*, 596 U.S. 543, 550 (2022) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
 28

1 525 U.S. 471, 481 (1999) (Section 1252(f) is “nothing more or less than a limit on injunctive relief”).

2 Every court to consider the question—including the Fifth Circuit, another court in this district
 3 in a recent case concerning TPS, and at least five other district courts—has ruled that APA relief is
 4 *not* functionally the same as an injunction. *Texas v. United States*, 40 F.4th 205, 219–20 (5th Cir.
 5 2022) (holding Section 1252(f)(1) “did not apply to vacatur” and, thus, DHS is “unlikely to
 6 demonstrate” a lack of “jurisdiction to vacate unlawful agency action”); *NTPSA I*, 773 F. Supp. 3d at
 7 825-30; *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 987 (C.D. Cal. 2024) (Section 1252(f) inapplicable
 8 because vacating ICE policy neither “compels nor restrains further agency decision-making”) (citation
 9 omitted); *Florida v. United States*, 660 F. Supp. 3d 1239, 1284–85 (N.D. Fla. 2023) (Section
 10 “1252(f)(1) does not strip [the Court] of the authority to vacate either of the challenged policies under
 11 the APA.”); *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029, 1045–46 (S.D. Cal. 2022) (Section
 12 1252(f)(1) does not prevent “‘set[ting] aside’ or ‘vacating’ a policy based upon an APA violation”),
 13 *aff’d in part, vacated in part sub nom., Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606 (9th
 14 Cir. 2024); *Immigrant Defs. L. Ctr. v. Mayorkas*, 2023 WL 3149243, at *14 (C.D. Cal. Mar. 15, 2023)
 15 (Section 1252(f)(1) “did not bar” vacatur); *Texas v. Biden*, 646 F. Supp. 3d 753, 768 (N.D. Tex. 2022)
 16 (same).

17 Defendants cite *Biden v. Texas*, 597 U.S. 785 (2022) for support, Opp. 12, but in fact *Biden*
 18 explicitly reserved the question whether its ruling applied to relief under the APA; *id.* at 801 n.4. On
 19 remand in that case, the district court rejected Defendants’ view. *Texas*, 646 F. Supp. 3d at 768 (citing
 20 *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010)).

21 As all of these decisions show, if this Court were to grant Plaintiffs’ motion, its order would
 22 act directly on the agency action itself; it therefore “would not ‘order federal officials to take or to
 23 refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory
 24 provisions’ at issue.” *Id.* at 769 (citing *Garland*, 596 U.S. at 550). Instead, it would directly prevent
 25 the agency action from taking effect. That is why “[w]hen a reviewing court determines that agency
 26 regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to
 27 the individual petitioners is proscribed.” *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 681

(9th Cir. 2021).

II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS

A. The Terminations Violate the APA Because They Were Predetermined and Not Based on Country Conditions Review.

As Plaintiffs explained in their opening brief, Defendants have adopted a general policy of terminating TPS *without regard to country conditions*. They have applied that policy to terminate TPS not just for Honduras, Nepal, and Nicaragua, but four other countries as well. *See* Mot. 7-13, 15-17. Those decisions violated the TPS statute, which requires the government to engage in an objective review of country conditions when deciding whether or not to extend TPS.

Defendants assert that Plaintiffs' predetermination claim fails because the Federal Register Notices announcing the challenged TPS terminations discuss country conditions. Opp. 13. On their view, that lip service is enough to satisfy the statute, even if no meaningful review took place. But this Court should not ignore the voluminous un rebutted evidence that Defendants decided to terminate *in advance*, regardless of what an objective country conditions review would find.¹ President Trump and Vice President Vance promised during their campaign to "revoke" TPS. Declaration of Jessica Bansal in Support of Plaintiffs' Reply ("Bansal Decl.") Ex. 1; Dkt. 18-19. Once in office, President Trump operationalized that promise via Executive Order 14,159, 90 Fed. Reg. 8443 (Jan. 20, 2025) ("Invasion E.O."). Defendants argue the Secretary's citation to the Invasion E.O. in her TPS termination decisions shows only that she considered "the Administration's immigration policy prerogatives." Opp. 13. But the Invasion E.O. is much more than general policy statement. It expresses President Trump's view that "many" immigrants, including TPS holders, "present significant threats to national security and public safety" and are "committing vile and heinous acts against innocent Americans." 90 Fed. Reg. 8443 (Jan. 20, 2025). It makes no attempt to reconcile that view with the fact that any individual who has been convicted of more than one misdemeanor or who can be regarded as "a danger to the security

¹ To the extent Defendants suggest this Court lacks authority to consider evidence beyond the Federal Register Notices themselves, they are wrong. Even at later stages of APA litigation, courts may consider extra-record evidence where the plaintiffs "make a showing of agency bad faith" or "to determine whether the agency failed to adequately "consider[] all relevant factors" or "explain[] its decision." *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005).

of the United States” is ineligible for TPS. 8 U.S.C. 1254a(c)(1); *Id.* 1254a(c)(2)(B)(ii) (citing 8 U.S.C. § 1158)). The Invasion E.O. goes on to express President Trump’s view that extensions of TPS designations during the Biden Administration “increase[] or continue[]” the “presence of illegal aliens,” despite the fact that individuals with TPS are lawfully present. 90 Fed. Reg. 8443, 8446. Finally, it directs Secretary Noem to “align” TPS designations with “the policies set out by this order.” *Id.*

Secretary Noem, for her part, has interpreted the Invasion E.O. as a “directive” to “fix” the TPS program. Dkt. 44-2. She has accepted the Invasion E.O.’s faulty premise that TPS holders are illegal, and that TPS designations are therefore illegitimate. *See, e.g.*, 90 Fed. Reg. 9040, 9042 (Feb. 5, 2025) (“TPS has allowed a significant population of inadmissible or illegal aliens without a path to lawful immigration status to settle in the interior of the United States”); Dkt. 18-11 (describing vacatur of Haiti’s TPS as “part of President Trump’s promise to rescind policies that were magnets for illegal immigration and inconsistent with the law”). Accordingly, for the Secretary, “fix[ing]” TPS means ending it. *See* Dkt. 18-11 (revoking TPS for Haiti returned “integrity” to the TPS program); Dkt. 18-24 (same for Afghanistan); Dkt. 18-13 (same for Haiti); Bansal Decl. Ex. 2 (same for Nicaragua); *see also* Dkt. 18-31 (implying prior extensions of Honduras’s TPS designation over the past two decades were improper because “Temporary Protected Status was designed to be just that—temporary”).

Relying on *Department of Commerce v. New York*, 588 U.S. 752 (2019), Defendants argue “a court may not set aside an agency’s policymaking decision solely because it may have been influenced by political considerations or prompted by an Administration’s priorities.” Opp. 14. (quoting *Dep’t of Commerce*, 588 U.S. at 78). But the government *lost* the *Dept’ of Commerce* case. The Supreme Court struck down that agency action because “agencies [must] offer genuine justifications for important decisions,” and the reasons the agencies offered were a pretext for their true unlawful purpose. *Id.* at 756. The same is true here. The Secretary’s efforts to conform her TPS decisions to the Invasion E.O. “cause[d] the agency’s action to be influenced by factors not relevant under the controlling statute.” *Town of Orangetown v. Ruckelshaus*, 740 F.2d 185, 188 (2d. Cir. 1984). *See also Saget v. Trump*, 375 F. Supp. 3d 280, 346-48 (E.D.N.Y. 2019) (holding that DHS Secretary during first Trump

1 administration “violated the TPS statute because she did not conduct the periodic review in accordance
2 with the dictates of the statute—her decision was preordained and pretextual, and it was made in part
3 due to political influence”).

4 Defendants never seriously contest the overwhelming evidence showing that the recent TPS
5 decisions are *not* based on an objective country conditions review. Even now, the State Department
6 warns against travel to both Honduras and Nicaragua. Bansal Decl. Exs. 3-4. In the last few months
7 Defendants have repeatedly found that foreign nationals can safely return to countries the State
8 Department deems *too dangerous* for U.S. citizens to even visit. *Compare* 90 Fed. Reg. 9040 (Feb. 5,
9 2025) (finding “notable improvements” “allow for [Venezuelan] nationals to be safely returned to
10 their home country”), *and* 90 Fed. Reg. 20309 (May 13, 2025) (finding “notable improvements in the
11 security and economic situation such that requiring the return of Afghan nationals to Afghanistan does
12 not pose a threat to their personal safety”), *and* Dkt. 18-13 (“conditions have improved to the point
13 where Haitians can return home in safety”) *with* Bansal Decl. Ex. 5 (“Do not travel to Venezuela due
14 to the high risk of wrongful detentions, terrorism, kidnapping, the arbitrary enforcement of local laws,
15 crime, civil unrest, poor health infrastructure.”); Dkt. 18-12 (“Do not travel to Afghanistan due to civil
16 unrest, crime, terrorism, risk of wrongful detention, kidnapping, and limited health facilities.”); Bansal
17 Decl. Ex. 6 (“Do not travel to Haiti due to kidnapping, crime, terrorist activity, civil unrest, and limited
18 health care.”).

19 Defendants have arrived at these implausible conclusions by ignoring entire categories of
20 country conditions that formed the basis for prior TPS designations and extensions. *See* Mot. 9-12.
21 For example, the State Department warns travelers to reconsider visiting Nicaragua “due to arbitrary
22 enforcement of laws, the risk of wrongful detention, and limited healthcare availability.” Bansal Decl.
23 Ex. 4. Prior TPS extensions for Nicaragua regularly took these conditions into account. *See, e.g.*, 88
24 Fed. Reg. 40294, 40300 (Jun. 21, 2023) (extending TPS for Nicaragua based in part on “political
25 instability,” including arbitrary law enforcement and wrongful detention). The termination decision
26 does not mention them. 90 Fed. Reg. 30086 (Jul. 8, 2025). Similarly, while the State Department urges
27 travelers to reconsider traveling to Honduras due to crime, including “widespread” “[v]iolent gang
28

activity, such as extortion, violent street crime, rape, narcotics, and human trafficking,” Bansal Decl. Ex. 3 , and prior TPS extensions for Honduras were based in part on the “staggering levels of crime” in the country, 88 Fed. Reg. 40304, 40310 (Jun. 21, 2023), the termination decision fails to address crime at all, 90 Fed. Reg. 30089 (Jul. 8, 2025). As to Nepal, while prior extensions were based in part on widespread food insecurity and lack of access to sanitation, 88 Fed. Reg. 40317 (Jun. 21, 2023), the termination notice mentions neither, 90 Fed. Reg. 24151 (Jun. 6, 2025).

A consistent pattern of reviewing only good conditions while ignoring bad ones suggests pretext rather than objective decisionmaking, as the TPS statute and the APA require.

B. The Terminations Violate the APA Because They Broke With Past Practice Without Acknowledgement or Explanation.

Plaintiffs’ second APA claim contends that Defendants inexplicably broke with past practice in ordering people who have lived here lawfully *for years*—more than 26 years for people from Honduras and Nicaragua—to leave in just *two months*. This violated the APA because Defendants did not acknowledge or explain why they broke with the agency’s long-standing practice of providing at least a six-month orderly transition period—and, more recently, a 12- or 18-month period—when terminating a TPS designation that lasted more than three years. Mot. 17-19. *See* Dkt. 28 (chart listing all TPS terminations, along with the orderly transition period provided).

Defendants devote less than one page to defending that horrific decision. Opp. at 15-16. They assert the Secretary’s failure to provide any orderly transition period does not violate the APA because it does not violate the TPS statute, which sets a 60-day minimum notice period for terminations. *Id.* But the APA imposes its own requirements, apart from the TPS statute itself. Among them, “[t]he APA constrains an agency’s ability to change its practices or policies without acknowledging the change or providing an explanation.” *Ramos*, 336 F. Supp. 3d at 1089–90. As the Supreme Court has explained, “the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. An agency may not, for example, depart from a prior policy sub silentio And of course the agency must show that there are good reasons for the new policy.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). There is simply no good reason to require people who have lived here so long to leave with so little

1 notice.

2 Defendants suggest DHS’s prior practice regarding orderly transition periods was
3 insufficiently “firm” to require explaining the change. Opp. at 16. But “[t]his constraint on changes to
4 agency policy is not limited to formal rules or official policies. It applies to practices implied from the
5 agency conduct.” *Ramos*, 336 F. Supp. 3d at 1090 (citations omitted); *see also FDA v. Wages and*
6 *White Lion Invs., L.L.C.*, 145 S. Ct. 898, 918 (2025) (“we have held that an agency changed its position
7 when it . . . ‘abandon[ed a] decades-old *practice*’”) (emphasis added) (citation omitted).

8 Defendants do not, and cannot, contest the clear past practice established here. Every prior
9 Administration, Democrat and Republican alike, including the first Trump Administration, provided
10 an orderly transition period when terminating a TPS designation of any substantial length. *See* Dkt.
11 28. Defendants’ failure to do so here is cruel. *See* Dkt. 17-4, Declaration of Maria Elena Hernandez ¶
12 17 (“To have only 60 days to wrap up my affairs, after thirty years here, with the loss of status,
13 employment authorization, healthcare, and social security, as well as the risk of detention and
14 deportation, on the other side of the 60 days, is unfathomable.”). It is also unlawful.

15 **C. Plaintiffs Are Likely to Prevail on the Discrimination Claim.**

16 Plaintiffs also argue that the TPS terminations here are unlawful because the agency’s action
17 is motivated by racial animus in violation of the Fifth Amendment’s non-discrimination component.
18 Defendants scarcely defend against the mountain of evidence establishing that this administration’s
19 TPS decisionmaking is motivated by racism. The Court can grant relief on this claim as well.

20 First, claims that a government policy is unconstitutional because it discriminates based on
21 race, ethnicity, or national origin receive heightened scrutiny under *Village of Arlington Heights v.*
22 *Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). *See Regents of the Univ. of*
23 *Cal. v. DHS*, 908 F.3d 476, 518-20 (9th Cir. 2018) (applying *Arlington Heights* to race discrimination
24 challenge to rescission of Deferred Action for Childhood Arrivals), *rev’d in part, vacated in part*, 591
25 U.S. 1, 34 (2020) (plurality) (same). Every judge to consider what standard applies to discrimination
26 challenges in TPS cases—including the otherwise-divided panel in the Ninth Circuit’s *Ramos*
27 decision—has agreed that *Arlington Heights* supplies the correct standard. *See, e.g., Ramos*, 975 F.3d
28

1 at 896 (vacated panel majority); *see also id.* 925 (Christen, J., dissenting).

2 Defendants nevertheless argue that deferential review under *Trump v. Hawaii*, 585 U.S. 667
 3 (2018), governs Plaintiffs’ claim. But as Defendants acknowledge, *Hawaii*’s deferential standard
 4 applies to claims that would constrain the “President” from acting on matters relating to “entry and
 5 national security.” *Id.* at 704; Opp. 16. Here, in contrast, Plaintiffs challenge a decision of an
 6 administrative agency (not the President), TPS holders are already here, and the agency did not act for
 7 reasons of national security. Thus, whereas *Hawaii* involved a Presidential Proclamation made in the
 8 name of national security to restrict entry of noncitizens outside the U.S., this case involves *agency*
 9 action pursuant to statute regarding the rights of people lawfully present within the country—many
 10 for decades. *NTPSA I*, 773 F. Supp. 3d at 856-57 (reasoning *Hawaii* does not govern review of TPS
 11 discrimination claim). The termination notices for Nepal, Honduras, and Nicaragua do not invoke any
 12 national security interests, and Defendants’ briefing does not point to any.

13 Like *Hawaii*, the other cases on which Defendants rely to argue for a more deferential standard
 14 of review all arise in radically different contexts. Opp. 17 (citing *Fiallo v. Bell*, 430 U.S. 787, 791-92
 15 (1977) (gender discrimination claim challenging Congress’s “exceptionally broad” power to legislate
 16 “the admission of [noncitizens]”) (emphasis added); *Mathews v. Diaz*, 426 U.S. 67 (1976) (challenge
 17 to statute applying length-of-residency requirement to noncitizens otherwise eligible for Medicare,
 18 and raising no racial animus claim); *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) (no
 19 discrimination claim; noncitizen was abroad)).

20 Under *Arlington Heights*, Plaintiffs are likely to prevail for the reasons explained in their
 21 opening brief. *See* Mot. 20-21. Tellingly, Defendants do not attempt to argue that President Trump
 22 does not harbor animus against nonwhite, non-European immigrants. The evidence to the contrary is
 23 overwhelming. Mot. 20-22. *See also* Bansal Decl. Ex. 7 (decrying migration of “murderers” and
 24 “prisoner[s]” “from Africa, from Asia, not just South America”); Bansal Decl. Ex. 8 (stating that “very
 25 bad people” from “Congo and Africa,” “from Asia,” “from the Middle East,” and “from South
 26 America” have entered the United States “so illegally.”); Bansal Decl. Ex. 9 (“[t]hey’re poisoning the
 27 blood of our country [N]ot just in South America, not just [the] three or four countries that we
 28

1 think about, but all over the world. They're coming into our country from Africa, from Asia, all over
2 the world").

3 Instead, Defendants again rely on the Ninth Circuit's vacated *Ramos* opinion, claiming it
4 forecloses Plaintiffs' discrimination arguments. Op. at 19. But, again, a majority of the Ninth Circuit
5 rejected that decision en banc. *Ramos*, 59 F.4th 1010. In any event, the facts here are stronger for two
6 reasons. First, substantial evidence establishes the Secretary herself was motivated by animus. *See* Mot.
7 20-21. Second, the facts with regard to President Trump's influence on the Secretary's termination
8 decisions are stronger than they were in *Ramos*, because the termination notices directly rely on the
9 Invasion E.O. to explain the Secretary's motivation to terminate TPS. Mot. 10-11. Thus, unlike in
10 *Ramos*, the evidence here shows that not only did the President "personally s[seek] to influence the
11 TPS terminations," his animus was adopted by the Secretary. *Ramos*, 975 F.3d at 897.

12 Although *Arlington Heights* supplies the correct standard, Plaintiffs would prevail even under
13 the deferential *Hawaii* standard. Defendants argue the termination decisions were rationally related to
14 "border security, foreign relations interests, and the objectives of the TPS program." Opp. 18. But for
15 the reasons explained, *supra* Pt. II.A, these reasons are not plausible as to TPS holders who have lived
16 here for decades with no criminal history. The decisions explicitly rely on the E.O. to "protect"
17 Americans from an "invasion" of unauthorized immigrants as their justification. But Honduran and
18 Nicaraguan TPS holders have lived lawfully in the U.S. for at least 26 years, and Nepali TPS holders
19 for at least 10 years; and by definition lack a criminal record. Mot. at 1, 12. Expelling them does not
20 "protect" us from an "invasion" or anything else.

21 **III. THE EQUITIES WEIGH HEAVILY IN FAVOR OF POSTPONEMENT.**

22 **A. Plaintiffs Will Suffer Irreparable Harm Absent Court Action.**

23 The equities in this case overwhelmingly favor Plaintiffs, as they will immediately be at risk
24 of detention and deportation to unsafe countries, and torn away from their homes and families, if this
25 Court does not intervene. Mot. 22–25. Defendants do not dispute this. Nor do they dispute that
26 Plaintiffs and other TPS holders will immediately lose their longstanding ability to live, work, go to
27 school, and receive medical insurance and social security in the United States. *Id.*; Opp. 21-22.

For obvious reasons, courts consistently recognize such harms as irreparable. *See* Mot. 23-24. Defendants nonetheless contest the seemingly-obvious fact that stripping long-time lawful residents of their right to live and work here will cause irreparable harm. They cite *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017), but it found the *opposite* of what they cite it for. *Compare* Opp. 22 (describing *Washington* as “finding that the potential irreparable harm of separating families did not justify a stay”); *with Washington*, 847 F.3d at 1169 (maintaining TRO and holding that “separat[ing] families” is a “substantial injur[y] and even irreparable harm[]”). Defendants also purport to quote *Stanley v. Illinois*, 405 U.S. 645, 647 (1972), Opp. 22, but the quoted language is not in *Stanley*. It comes from *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011), which says that harm from deportation is not automatically irreparable because noncitizens can be returned to the United States after removal if they prevail on appeal. But Defendants do not argue that TPS holders removed during this action would be able to return to the United States and regain their TPS status if Plaintiffs later prevail. In any event, Plaintiffs’ immediate harms also include loss of employment authorization, loss of health insurance and social security benefits, and potentially detention. Mot. 22-24.

With no response to the overwhelming evidence or the law, Defendants resort to two arguments rooted in misunderstandings of immigration law. First, they say that harm to TPS holders is “inherent” in the “temporary nature” of TPS. *Id.* at 20-22. That makes no sense. The TPS statute did not require Defendants to terminate Plaintiffs’ status. *See infra* 6-12. That TPS designations may be terminated when permitted by the statute does not mean TPS holders suffer no injury when TPS is revoked unlawfully. Indeed, Defendants made the same argument in *Ramos v. Nielsen*, and the district court rejected it, explaining that “the shortening of [] time in the United States and acceleration of [] removal if relief is not granted may constitute irreparable injury.” 336 F. Supp. 3d 1075, 1087 (N.D. Cal. 2018); *see also Leschniok v. Heckler*, 713 F.2d 520, 523–24 (9th Cir. 1983) (rejecting argument that unlawful termination of disability benefits did not cause irreparable harm because termination put plaintiffs “in the same situation as the many others the Secretary terminates”).

Second, Defendants blame Plaintiffs for their harm, as though they could have easily obtained permanent lawful residence if they had just tried harder. But they cite nothing for that suggestion, and

1 it is false. Opp. 21. TPS status does not itself provide a path to permanent residence. *See generally*
 2 *Sanchez v. Mayorkas*, 593 U.S. 409 (2021). Some TPS holders may be able to obtain lawful status
 3 through other mechanisms, and when possible many have done so. But because of the vagaries of U.S.
 4 immigration law, many others have no clear pathway to lawful status aside from their TPS—even if
 5 they have lived here for decades. Those who cannot obtain permanent residence are still harmed by an
 6 unlawful termination of the legal status they already have. *See Bautista-Perez v. Holder*, 2010 WL
 7 1345028, at *9 (N.D. Cal. Apr. 6, 2010) (“Plaintiffs clearly benefit from TPS, which confers a
 8 temporary immigration status and entitles them to work authorization.”).

9 **B. The Balance of Equities and Public Interest Favor Postponement.**

10 Defendants ask the Court to prejudge the equities based on the Supreme Court’s emergency
 11 stay in *Noem v. National TPS Alliance*, No. 24A1059, 2025 WL 1427560 (S. Ct. May 19, 2025)
 12 (“NTPSA II”). Opp. at 22-23. But that unreasoned emergency stay says little about the equities even
 13 in that case, let alone here. *See Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,
 14 concurring) (“To reiterate: The Court’s stay order is not a decision on the merits”). The *NTPSA II*
 15 emergency stay order did not adopt any rule, let alone the one Defendants advocate: that “harms the
 16 government faces from nationwide injunctions barring it from implementing immigration policies
 17 outweigh harms to opposing parties.” Opp. 23. That would end all preliminary relief in immigration
 18 cases and effectively nullify § 705—which authorizes courts to “postpone the effective date of
 19 an agency action” to “prevent irreparable injury.” Congress has not done that. *See Patagonia Corp. v.*
 20 *Bd. of Governors of Fed. Rsrv. Sys.*, 517 F.2d 803, 813 (9th Cir. 1975) (“Interpretations that nullify
 21 statutory provisions . . . are, and should be, disfavored.”).

22 Otherwise, Defendants agree with Plaintiffs that “[t]he government and the public share an
 23 interest in ensuring that the process established by Congress . . . is followed as Congress intended.”
 24 Opp. 23. Because Defendants did not follow that process, these factors favor postponement.

25 **IV. PLAINTIFFS’ REQUESTED RELIEF IS NOT OVERBROAD.**

26 Because Plaintiffs ask this Court to postpone agency action under Section 705 of the APA, the
 27 Court should order relief against the agency action itself. Such action necessarily benefits non-parties,
 28

1 because “[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result
 2 is that the rules are vacated—not that their application to the individual petitioners is proscribed.” *East*
 3 *Bay Sanctuary Covenant*, 993 F.3d at 681; *see also Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21
 4 (D.C. Cir. 1989) (same). As the Fifth Circuit recently explained, “[n]othing in the text of Section 705,
 5 nor of Section 706, suggests that either preliminary or ultimate relief under the APA needs to be limited
 6 to [the associational plaintiff] or its members.” *Career Colls. & Schs. of Tex. v. Dep’t of Educ.*, 98
 7 F.4th 220, 255 (5th Cir. 2024).

8 That traditional APA rule applies with particular force here. *See East Bay*, 993 F.3d at 681
 9 (recognizing the “need for uniformity in immigration policy”); *Az. Dream Act Coal. v. Brewer*, 81 F.
 10 Supp. 3d 795, 810 (D. Ariz. 2015), *aff’d*, 855 F.3d 957 (9th Cir. 2017) (“Requiring . . . officials . . . to
 11 distinguish between . . . recipients who are members of the [plaintiff] and those who are not is
 12 impractical” and holding relief “should apply to all DACA recipients”).

13 Defendants suggest the Supreme Court altered this longstanding rule in *Trump v. CASA, Inc.*,
 14 __ S. Ct. __, Nos. 24A884 – 86, 2025 WL 1773631 (June 27, 2025), but *CASA* was explicit that its
 15 holding was limited to cases involving universal *injunctions*: “Nothing we say today resolves the
 16 distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal
 17 agency action.” *Id.* at *8 n. 10; *id.* at *21 (Kavanaugh, concurring) (“[g]oing forward, . . . district
 18 courts may . . . preliminarily set[] aside . . . an agency rule under the APA.”). Section 705 permits
 19 courts to “issue all necessary and appropriate process to *postpone the effective date* of an agency
 20 action.” 5 U.S.C. § 705 (emphasis added). That is all Plaintiffs seek here. Congress clearly authorized
 21 courts to take that action, and nothing in *CASA* says otherwise.

22 CONCLUSION

23 For the reasons described herein and in Plaintiffs’ Motion to Postpone, the Court should
 24 postpone the effective date of the challenged decisions pending a final decision in this case.

Date: July 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

NATIONAL DAY LABORER ORGANIZING
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